



Non-Confidential Version

26 March 2021

**Subject: TD0001 - Welded Tubes and Pipes originating in China, Belarus and Russia -
Comments concerning the submission of UK Steel**

On behalf of our client, China Chamber of International Commerce (CCOIC), we hereby submit the following:

1. The UK is not entitled to adopt the EU measures via its unilateral transition approach without abiding by the WTO rules.

According to Article 1 of the Anti-dumping Agreement, “*an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement.*”

In this case, CCOIC submits that when the measures were imposed, the Commission considered the situation and statistics of the EU28, rather than that of the UK market only. Following Brexit, the market size of the EU decreases. The decreases in the EU’s market size render that (1) the initial dumping margin determination may become inappropriate, and (2) the injury determination may become inaccurate. Secondly, the UK’s approach would violate the procedural requirements to conduct a proper investigation since it is the EU commission instead of the UK authority that conducted the original investigation. It follows that the UK cannot “rollover” any trade remedy measures and shall conduct its own *de novo* investigations.

2. The so-called “transition review” is not a review within the meaning of the ADA and it shall be terminated immediately.

Firstly, as emphasized in CCOIC’s submission on 27 May 2020, the transition anti-dumping review does not constitute a review investigation within the meaning of the ADA. The review under the ADA aims to determine whether the current in-force measure shall be maintained, varied, or revoked, which means that all the determination pertaining to the review must be established based on the existing measure. However, in the EU’s Notice regarding the application of anti-dumping and anti-subsidy measures in force in the European Union following the withdrawal of the United Kingdom and the possibility of a review (2021/C 18/11), it clearly states that “*all anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union,*” which means that the existing anti-dumping and anti-subsidy measures no longer apply to the UK from 1 January 2021. This renders the continuation of the transition review unjustifiable.

Secondly, as an original investigation, the UK fails to meet the condition for initiating the investigation as stipulated in Article 9(1) of Schedule 4 of the Taxation (Cross-border Trade) Act



since the volume of imports from China during the POI is negligible. Moreover, although the investigation has been initiated, the termination is mandatory under Article 5.8 of the ADA and Regulation 64 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

3. Even if the UK considers that the transition review is a “unique” review rather than an original investigation, its compliance with the WTO rules still remains questionable.

As a matter of fact, there will be a gap, which may be longer for measures with later expiration dates, between the end of the transition period and the publication of the transition review determination. During this period, the UK will continue to apply the original EU measures to the imports with no investigation in place, which is an undisputed violation of the WTO rules.

For instance, in the trade defense case against imports of Ceramic tableware/Kitchenware (AD586), where the UK determined to maintain the existing measure, the expiry date of the measure is 16 July 2024. This means the original EU anti-dumping duties will continue to apply until the outcome of the transition review is released. Hypothetically, if the transition review of AD586 were initiated not long before 16 July 2024, the anti-dumping duties would be in place until 2025, or even later.

4. Response to the submission of UK Steel with regard to the status of the transition review.

CCOIC notes that in the UK Steel’s submission on 26 February 2021, it argues that the transition review is a “unique situation” which will consider the UK part of the measure, and the investigation has to be seen in the context of the link to the original EU28 measure. CCOIC submits that this is incorrect and groundless.

Firstly, the WTO law does not contain specific rules on the outcome of withdrawal from a customs union, let alone on the application of the trade remedies where the territory of the customs union that initially imposed changes. Moreover, the EU has over a thousand international agreements with non-EU countries, covering trade, aviation, nuclear co-operation and other issues, which would apply to the UK when it left the EU.¹ In another word, the UK has to renegotiate its own trade rules with third countries. As recognized by the UK government, the simple “rollover” of the EU trade agreement is impracticable.²

In this regard, CCOIC submits that the treaties cannot be maintained or “transitioned”, let alone the trade remedy measures. Could the UK apply to the international treaties the same arguments as those allegedly justifying its position regarding the trade remedy measures? Or to put it differently, would a “rollover” of the treaties be practical, because they were concluded with the UK’s participation and ratification which in turn took into account the situation of the UK? The answer to the question is self-evident.

¹ Fella, S. (2021, March 13). UK replacement of the EU’s external agreements after Brexit. House of Commons Library. <https://commonslibrary.parliament.uk/research-briefings/cbp-8370/>.

² *Ibid.*



Secondly, in stark contrast with its previous wording, UK Steel seems to have realized the illegitimacy of the "transition" approach, stating that *“the UK will not however have either the time or capability to review each individual measure prior to leaving the EU [...] the UK must therefore automatically adopt all EU AD, CVD and safeguards tariffs in place on the day of exit. Most of the AD measures will not be strictly compliant with WTO standards, as export sales prices to the UK are unlikely to be identical to the EU average, and therefore UK-specific dumping margins will be different... (emphasis added).”*³

In this respect, CCOIC submits that the automatic adoption of the existing EU trade remedy measures because of the UK investigation authority’s limit in time or capability is complete without legal merit.

5. Response to the submission of UK Steel with regard to the replacement of export price.

In its submission, UK Steel, again, held onto its groundless and ill-founded argument to replace the Chinese export price to UK.

In this regard, CCOIC submits that, as recognized by UK Steel, neither the UK law nor the ADA provides that the negligible volume of exports may be a reason to replace the export price. CCOIC would like to remind UK Steel that insignificant exports may have an impact on the initiation of investigation and the imposition of duties, but not the calculation of anti-dumping margins.

6. CCOIC pays close attention to the TRID’s injury analysis at the stage of the disclosure of essential facts.

With regard to UK Steel’s comments on the injury, it argues that the injury analysis conducted by CCOIC only makes sense, if this is a new investigation rather than a review of an existing one. CCOIC submits that this is incorrect.

Firstly, as illustrated previously, the transition review is indeed a new investigation, rather than a review under the ADA, notwithstanding its terminology. Therefore, such an analysis on injury is mandatory, either under the ADA or the domestic law of the UK.

Secondly, UK Steel fails to take into consideration the injury analysis made by the CCOIC in its 23 October 2020 submission, in which the CCOIC has conducted an in-depth analysis on a number of factors that were specified by the TRID in its guidance specially designed for the transition review.

Thirdly, CCOIC looks forward to the TRID’s analysis regarding the injury indicators at the stage of the disclosure of essential facts, since it is difficult for interested parties to obtain the information pertaining to the specific welded tube section of the UK industry when no information has been disclosed by the TRID. Besides, the TRID has collected information such as questionnaire replies from not only the domestic producers of the production in question and other interested parties, such

³ The UK Steel. (2017, April). UK Implementation of Post-Brexit WTO-Compliant Trade Defence Remedies: a Steel Sector View, page 22. http://www.nass.org.uk/Publications/Publication4309/UK-Steel---Steel-Sector-View_300317_SP_Final.pdf.



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as the industry association and distributor, not to mention from other available sources.

Based on the foregoing, CCOIC respectfully requests the TRID to terminate the transition anti-dumping review concerning certain welded tubes and pipes of iron or non-alloy steel from China.

Yours sincerely,

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